



Foundations for Europe

# Rethinking Our Legal and Fiscal Environments

***The present publication has benefited from the support and participation of the following:***

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# **Foundations for Europe**

*Rethinking Our Legal and Fiscal Environments*

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## ***From the Chair***

Every individual and legal person has the right to set up a foundation — how should the law deal with this right? What should be the requirements? How should this influence taxation?

These are just a few of the issues that the following *Fundamental Legal and Fiscal Principles for Public Benefit Foundations* and the *Model Law for Public Benefit Foundations in Europe* address. Both documents have been drafted by the European Foundation Centre's (EFC) European Union Committee (EUC) and its Legal and Tax Task Forces as part of the EUC project to enhance the operating environment for foundations and funders in Europe.

The purpose of the work is twofold. First, it can influence the development of new foundation laws as well as the revision of existing foundation laws at national level; and second, it contains the essential elements for any new EU legislation for foundations.

The publication of these documents comes at a time when, after 30 years of deadlock at EU level in the field of company law, the European Company Statute has been adopted (2001) and proposals for other European legal forms are under review, although so far no EU proposal has been made to introduce a European legal instrument for foundations. Over the past year, a High Level Group of Company Law Experts set up by the European Commission has reviewed current trends in the field of European company law and the need for new European legal forms.

In its report published in November 2002, the group stated that it does not regard the creation of a European legal form of a foundation as a priority. The report states however that the drafting of model laws could facilitate the potential development of a European legal form for foundations. I believe this conclusion is in line with the approach the EUC has taken in drafting the Model Law. Both the Model Law and Fundamental Principles form a timely and useful base to initiate a fruitful discussion among foundations in Europe.

I would like to thank all those who have participated in the drafting of the Fundamental Principles and the Model Law, including EFC members, and the EUC and its Legal and Tax Task Forces. In particular I would like to thank Francis Charhon of Fondation de France, Chair of the EUC; Rui Chancerelle de Machete of Fundação Luso-Americana para o Desenvolvimento, Chair of the Legal Task Force; and Simon Hebditch of the Charities Aid Foundation, Chair of the Tax Task Force.

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*Brussels, June 2003*





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## Introduction

### *Rethinking Tools for a Better Environment*

The work of the EFC European Union Committee (EUC) and its Legal and Tax Task Forces revolves around rethinking and promoting tools for a better operating environment for foundations in the EU. These efforts fall under the project, "Enhancing the Legal Environment for Independent Funders in Europe", which to date comprises three key steps:

- Mapping the legal and fiscal environments of foundations across the 15 EU Member States
- Developing *Fundamental Legal and Fiscal Principles for Public Benefit Foundations*
- Drafting a *Model Law for Public Benefit Foundations in Europe*

In 2002, the EUC completed the first phase which involved a mapping exercise to gather information on the legal and fiscal environments of foundations across the 15 EU Member States<sup>1</sup>. These 15 country profiles are available at [www.efc.be/projects/eu/legal/country\\_profiles.asp](http://www.efc.be/projects/eu/legal/country_profiles.asp). They form a basic database on legal and fiscal legislation and practices in the EU and are intended to facilitate the identification of good practice on which a Model Law for Public Benefit Foundations can be based. These efforts were complemented by the EFC Social Economy and Law (SEAL) Journal<sup>2</sup> which documents the operating frameworks of the 'third sector' in EU candidate countries and the wider Europe.

This mapping work enabled the identification of good practices and rules in the countries concerned, and served as the basis for the second phase, which involved developing *Fundamental Legal and Fiscal Principles for Public Benefit Foundations*. They cover in particular the creation of foundations, legal personality, legal capacity, and the governance of public benefit purpose foundations. They also address the liability of foundations and their board members. The last section deals with the tax treatment of foundations, donors and beneficiaries.

Building on these Fundamental Principles, the third step of the EUC initiative was the drafting of a *Model Law for Public Benefit Foundations in Europe*. The Model Law illustrates one possible way to translate the agreed EFC Fundamental Legal and Fiscal Principles into legislation. It is hoped that the Model Law can influence both the revision of existing foundation law at national level and, where appropriate, the development of new foundation laws.

The Model Law covers all the basic elements of a law for public benefit foundations. It addresses the requirements for the establishment of the foundation and the responsibilities of the governing board. It sets out means of supervision, which protect the foundation as a legal entity; the will of the founder; and the interest of the public at large.

In its second part, the Model Law addresses the tax treatment of foundations and donors, which in practice would be tackled through the different national tax laws. Current national tax rules are often complicated and not very user-friendly. The tax section of the Model Law provides clear tax relief for public benefit foundations, whether they are active in their country of origin and/or abroad. The Model describes the ideal tax environment for funders and foundations acting across borders. In EU Member States, the tax treatment of foreign and national foundations should be similar, and the tax incentives for individual and corporate donors should be identical regardless of whether they give to a domestic foundation or to another EU-based foundation.

Foundations and their support organisations may want to use this Model as a basis to advocate for an enhanced operating framework in their own countries and for improvements as regards, in particular, the giving and receipt of gifts and grants across borders as well as the cross-border activities of foundations in Europe.

### ***Tools for Action: Associating Private Wealth to Benefit the Public<sup>3</sup>***

Why is taking stock of the legal situation so important? Why should legal and fiscal hurdles to foundations' activities and foundation development in general be tackled as a priority?

The answer lies in the nature of foundations' work; the added value they can bring; and the context of current discussions on the re-organisation of our modern society and the 'European model', which involves a re-appraisal of the role of the State and that of other stakeholders in the private sector.

Across Europe, foundations are receiving increased attention and are taking up a more central role in discussions on the future of economic, social, environmental and other policies. The estimated 200,000 foundations in Europe represent a small but important part of the non-profit sector. Their role and activities are driven by a public benefit purpose, which aims at an improvement in the living conditions and quality of life as well as promoting civic initiatives and active citizenship. At a time when governments are reviewing their spending for social and other community programmes and their cooperation with the third sector, one may look at how public needs could be addressed through initiatives launched and funded with and within the foundation sector.

Support for post-graduate studies and school reform; research against muscoviscidose; prizes for television programmes; cross-border parliamentary exchanges; employment and business creation schemes; research into risk prevention; and improving management in health services are only a few examples of foundations' activity in Europe. Their action ranges from the areas of protection of the environment to early childhood development; violence prevention to health care services; work with senior citizens to assistance for fostering participatory democracies; and promotion of civil dialogues across Europe and beyond.

Foundations' activities revolve around the following objectives:

- **Empowering individuals and creating social linkage:** Organised philanthropy is very much about increasing the efficiency of citizen participation by strengthening civil society.
- **Promoting equal access and quality of access:** In an economic context, foundations are about a more equitable and sustainable environment and distribution of wealth where all members of society can find a useful role whatever their talents, possibilities or, indeed, disabilities.
- **Building social capital:** Foundations are too often only considered as financial retailers and venture capital banks for civil society. They are above all bodies of knowledge and expertise whose primary purpose is to create added value in society in their respective fields of operation. They can play a valuable role as leaders daring to step onto contentious territory, where government could not venture, to help to introduce new variables into society's discourse.
- **Sustaining research to act upstream:** Foundations work to help tackle the root causes of problems, rather than just alleviating negative impact and effects. The bulk of

their action is to address causes and try to anticipate changes in particular by supporting research, building expertise and testing new approaches.

Over the last decade the foundation community has witnessed a distinct change in Europe. Supporting the development of the emerging democracies and market economies in Central and Eastern Europe, and the advancement of the Single Market, foundations are increasingly operating cross-frontier in Europe, developing joint initiatives and advocating European cooperation. Building on their respective cultures, traditions and structures, foundations perceive the importance of working together, the concrete added value of partnership, sharing expertise, pooling resources and promoting European solidarity and integration. The objective of the EFC and the European Union Committee is to underpin these efforts and assist in reviewing and designing the tools necessary to advance and facilitate foundations' work at European level.

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*Brussels, June 2003*

### **About the EFC European Union Committee**

The European Union Committee (EUC), set up in 1999, is a policy advisory group to the EFC Governing Council on activities and developments regarding EU internal issues, and the EUC maintains relations with EU institutions and fora. It is particularly concerned with the operating environment of independent funders in the EU both in legal and fiscal terms.

The EUC aims to:

- **Increase knowledge about foundations in Europe** through the promotion of position papers on the role and characteristics of foundations in Europe.
- **Provide policy guidance** on EU relations with independent funders, programmes and initiatives.
- **Represent the EFC in European fora**, including the European Standing Conference of Cooperatives, Mutuals, Associations and Foundations (CMAF). This platform works on increasing the involvement of CMAF in EU economic and social policies and programmes.
- **Improve the operating environment of foundations** by setting up Legal and Tax Task Forces (in 2000) to address the issue of the legal and fiscal operating environment of organised philanthropy in the EU.
- **Promote research on foundations** through its Research Task Force, which was set up in 2002 to promote foundations' visibility and document their social utility across the EU through data collection.

Projects of the EUC receive special support from Fondation de France and the King Baudouin Foundation. Fellowship support is provided by the Körber Stiftung, the Gemeinnützige Hertie-Stiftung and the Robert Bosch Stiftung.

### About SEAL

The Social Economy and Law (SEAL) Project, a project launched in 1998 by the EFC Orpheus Programme, promotes an enabling legal and fiscal environment for foundations and citizen associations in the New Europe. The project complements and supports the work of the EUC and aims to expand the knowledge base on legal and fiscal issues and build a network of legal reform architects. This is implemented through four components:

- The **SEAL Journal** is the focal point of the SEAL Project. The Journal provides a comparative picture of current legal and fiscal developments. It is published three times a year and is distributed by the EFC and the Orpheus network of centres serving civil society.
- The **SEAL Electronic Bulletin (E-SEAL)**, distributed by e-mail three times a year, includes legal and fiscal updates and a preview of the forthcoming issue of the Journal.
- The **Directory of Key Contacts** includes profiles of key individuals with expertise, experience, and contacts in the area of social economy law. The third edition (2002) features 85 profiles from across the New Europe.
- A network of **national legal websites** in Central and Eastern Europe and the New Independent States is being developed.

The SEAL Project is made possible thanks to the generous support of the Charles Stewart Mott Foundation. Additional support is provided by the Charities Aid Foundation, Bertelsmann Stiftung, and Fondazione Monte dei Paschi di Siena.

### Endnotes

1. *Foundations in the European Union: Profiling Legal and Fiscal Environments, An Overview by the European Foundation Centre*, European Foundation Centre, Brussels, 2002.
2. *SEAL Social Economy and Law Journal*, Winter 2001-2002, Volume 4, Number 3.
3. "Working with Foundations in Europe: Why and How?" European Foundation Centre, Brussels, 2001.

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## ***Fundamental Legal and Fiscal Principles for Public Benefit Foundations***

The EFC's European Union Committee, with the help of its Legal and Tax Task Forces, has developed these *Fundamental Legal and Fiscal Principles for Public Benefit Foundations* as part of its project: "Enhancing the Legal Environment for Independent Funders in Europe". The project began with a mapping exercise that included a review of foundations' operating frameworks and the drawing up of profiles of the legal and fiscal environment in which foundations operate in each of the EU Member States. This work facilitated the project's second phase, namely the identification of good practice upon which these Fundamental Principles are based.

These Principles are intended to apply to any foundation that is of 'public benefit'. The Principles:

- Underpin the constituent elements of a model law for foundations
- Can influence new foundation laws and the revision of foundation laws at national level
- Contain the essential ideas for any EU legislation for foundations

### **1. THE RIGHT TO CREATE**

There should be a fundamental right, enshrined in European and national law, for any natural person or legal entity to create a public benefit foundation in any EU Member State.

There should be clear statutory provisions for the setting up of a foundation and, provided statutory requirements are met (see Principle 3), the State should have no discretionary power to decide whether a particular foundation should or should not be created. There should be a right for any natural person or legal entity to create a foundation whose purposes are legal and of public benefit.

The State or any public authority should be able to create a foundation, but any foundation so created must be independent. Foundations created by commercial enterprises could be funded by them, but they should be legally distinct and be operated independently of the commercial interests which create them.

#### **Comment**

This principle intends to introduce the right to create a foundation as soon as the requirements are fulfilled. The requirements may vary from one country to another but the principle of having the right to create a foundation should be a common rule.

The assumption is that it is public benefit foundations that constitute the focus of the EUC and its Task Forces' interest. To draw a distinction between such foundations and other types of foundation by other than fiscal means may, however, already be controversial.

### **2. BASIC FUNCTIONAL DEFINITION**

Foundations are *independent, separately constituted non-profit bodies with their own governing board* and with their *own source of income whether or not exclusively from an endowment*. They have been irrevocably attributed goods, rights and resources for the performance of work and support for *public benefit purposes*, either by supporting

associations, institutions or individuals etc., or by operating their own programmes. Foundations have no members.

Public benefit foundations may be established for a limited period, but assets given over for public benefit purposes for such foundations may not revert to private ownership.

### **Comment**

This definition excludes private purpose foundations.

## **3. CREATION**

The law should introduce clear legal requirements for the establishment of a foundation.

It should be possible to create a foundation by notarial or trust deed, or by will. Both natural persons and legal entities may set up foundations.

Where the establishment of a foundation is linked to registration and/or approval by the competent authority, the creation of a foundation should be an administrative matter: that is to say that, provided the administrative requirements for the creation of a foundation are met, the State should have no discretion in the matter (see Principle 1). In particular, the competent authority should not be entitled to make decisions on political grounds.

However, the competent authority should be able to refuse to approve or to register an applicant foundation if, and only if, it deems the purposes of the foundation to be illegal; or if necessary for the protection of public security or safety; the prevention of crime and disorder; the protection of health and morals; or protection of the rights and freedoms of others.

## **4. FOUNDATIONS' REGISTER**

As a matter of good practice foundations should register. Registration should take place on receipt by the registration authority of the foundation's statutes, and business address (or addresses if it intends to establish branches in other countries) together with the names of its board members. This information, once verified by the registration authority, should be made publicly available. The registration authority should be notified about the changes.

As a matter of good practice and administrative efficiency, the registration authority should also be the body responsible for supervision (see Principle 15).

### **Comment**

The registration authority could be part of the public administration and/or funded by the State, but should be independent of the government in its authority and decision making in individual cases.

## **5. LEGAL PERSONALITY**

In general, all foundations should have legal personality, except non-autonomous foundations that exist in some countries. Foundations acquire legal personality in different ways in the Member States of the EU: in some countries, foundations acquire it without approval or registration; in most countries, however, state approval or registration is needed.

## **6. LEGAL CAPACITY**

Foundations should have the right to hold movable and immovable property and to engage in any activity, which is legal, allowed for in its statutes, and consistent with its public benefit status (see Principles 8 and 10). Foundations should be able to receive and hold gifts of any kind, including shares and other negotiable instruments, and gifts 'in kind', *from any lawful source and without the permission of any public or supervisory authority*.

## **7. GOVERNANCE**

Foundations have their own governing structure, usually in the form of a board. The law or the statutes of the foundation could make provision for additional structures. As a matter of good practice, where an individual founder, or a family, establishes a foundation, the founder and his/her relatives should not be the only members of the board.

Members of the governing structures, and officers of the foundation, should observe a duty of loyalty in the exercise of their responsibilities to the foundation; should act with diligence and care; and should ensure obedience to the laws and statutes of the foundation.

### **Comment**

The introduction of a 'governance principle' is intended to underline the importance of foundations' boards and good governance. It also touches upon the issue of the disclosure of governance structures and practices. This topic is currently being discussed by EU experts in the context of a review of company law in Europe. In addition, care needs to be taken to ensure that no particular section of society is in practice – for example, for reasons of poverty or work patterns – discriminated against in relation to serving on the boards of foundations.

## **8. PUBLIC BENEFIT PURPOSES**

A 'public benefit purpose' should be any lawful purpose that supports or promotes public benefit by supporting or promoting, *for example*, one or more purposes from the following list. It should be noted that this list is intended to be illustrative, not definitive, and that the topics are not in any order of priority or desirability. This list is open to other purposes determined to be of public benefit.

- Arts, culture and historical preservation
- Assistance to, or protection of people with disabilities
- Assistance to refugees and immigrants
- Civil or human rights
- Consumer protection
- Development, international and domestic
- Ecology or the protection of environment
- Education, training, and enlightenment
- Elimination of discrimination based on race, ethnicity, religion, disability, or any other legally proscribed form of discrimination
- Health or physical well-being and medical care
- Humanitarian or disaster relief
- Prevention and relief of poverty
- Promotion of European and international understanding
- Protection of and support for children and youth
- Protection of and support for disadvantaged individuals
- Protection or care of animals
- Science



- Social cohesion, including the promotion of respect for minorities
- Social and economic development
- Social welfare
- Sports, amateur athletics

### **Comment**

Whatever list is chosen, it should be as wide as possible and subject to change from time to time so that the notion of public benefit remains responsive to social needs and to public perceptions of what is worth supporting with tax concessions. The list should be of purposes that are presumed to be of public benefit. The presumption of public benefit ought, however, to be rebuttable on the grounds, for example, that services provided are not needed or appropriate for a particular area or public, or where the beneficiaries constitute in effect an 'elite'.

## **9. THE NOTION OF 'PUBLIC'**

To qualify as being of public benefit, a foundation should serve the whole public or a significant group within the general population. Its purposes should be amongst those enumerated in the principle on public benefit purposes above and not disallowed for any reason.

In no case could the foundation serve essentially private interests. There should be a strict non-distribution constraint. Assets, earnings, and profits of a foundation should be used to support the public benefit purposes of the foundation and should not be directly or indirectly used to provide benefits to any founder or donor (*qua founder or donor*) of the foundation.

On dissolution, any remaining assets should be spent on public benefit or made over to another public benefit organisation with objectives as similar as possible to those of the defunct organisation.

## **10. TRADING/ECONOMIC ACTIVITIES**

A foundation should have the capacity, and be free, to engage in trading or other lawful economic activities provided that the results are clearly and directly used in pursuance of its public benefit purposes and do not constitute the aim of the foundation. Income may be earned from 'unrelated' economic activity, but such activity must not form the foundation's main activity.

### **Comment**

The idea behind this principle is that foundations can undertake economic activity (trading goods and services) as long as the activity is used to facilitate the pursuance of its public benefit purpose either directly or by using the income of this activity.

## **11. POLITICS**

A foundation should be able to engage freely in research, education, publication, and advocacy with respect to any issue affecting the public interest, including criticism of the policies or activities of the government or the State or of particular laws. It should not, however, be permitted to fundraise or campaign in support of, or opposition to, any political party or candidate for appointive or elective public office, or otherwise engage in 'party' politics.

### **Comment**

Political parties are also non-profit bodies, but distinct ones. Quite apart from the desirability of maintaining the confidence of the largest possible section of the public, it would seem wise to distance foundations as far as possible from possible political fundraising activities and campaigns.

## **12. AMENDMENT OF THE STATUTES**

Any amendment of the bylaws, insofar as they affect the purposes of the foundation, should be consistent with the will of the founder.

Any changes proposed by the board to the purposes of the foundation as set out in the bylaws should be approved by the registration/supervision authority and given publicity. In general, the purposes of the foundation should only be changed under clearly defined circumstances (e.g. the purpose has already been achieved or cannot be achieved).

## **13. DISSOLUTION OF THE FOUNDATION**

### **(a) Voluntary dissolution**

The board of the foundation should be able to decide upon dissolution in clearly defined cases (if the aim of the foundation is achieved or the total loss of assets has taken place). In any case, the board decision has to be approved by the registration/supervision authority.

### **(b) Involuntary dissolution**

The dissolution of foundations should be the *ultima ratio* measure of any registration/supervision authority.

## **14. TRANSPARENCY AND ACCOUNTABILITY**

Foundations should be obliged to keep accounts and to provide an annual report of their activities, and to lodge both documents annually with the registration/supervision authority. In addition, larger foundations should have their accounts professionally audited.

It would be desirable if accounts and reports, together with the foundation's bylaws and details of its board, were publicly available.

### **Comment**

We are of the opinion that foundation registers lead to transparency. Increased coherence between the many different reporting, accounting and auditing systems is recommended.

## **15. SUPERVISION**

With the aim of maintaining public confidence in the sector, means of supervision should exist, above all to ensure the foundation's financial probity and good governance and that its continued public benefit status is merited. The supervisory authority, whether or not it is also the registration authority should have available to it a range of sanctions designed to deal with mismanagement or abuse.

The scope of the supervisory authority should be clearly defined in law and its jurisdiction must be exercisable in practice.

### **Comment**

It is an open question whether the registration authority should also be the body having the power to supervise foundations. Practical considerations suggest that it should be.

### **16. LIABILITY**

The liability of a foundation should be limited to its assets. Members of the governing structure should be liable to injured third parties for the wilful or grossly negligent performance or neglect of their duties, or for criminal acts, but should not otherwise be personally liable.

### **17. APPEALS**

Any decision of the registration and supervisory authorities should be appealable to the courts.

### **18. TAX TREATMENT OF THE FOUNDATION, DONORS AND BENEFICIARIES**

The rules to apply for tax exemption of the foundation as well as tax incentives for the donor should be clear and user-friendly. Tax relief schemes should be clearly defined in the law and should not be at the discretion of the competent authority.

There should be a presumption that all foundations engaged in public benefit activities (see Principle 8) are entitled to be relieved of the taxes listed below. Tax relief could be dependent on the *expenditure of the foundation's income for public benefit purposes*. In other words, foundations should be expected to spend their resources at a reasonable rate. That rate should not, however, be defined in law. Each case should be treated on its merits. Furthermore, income judged as having been expended on activities other than those defined as being of public benefit should be taxed in the normal way.

### **Comment**

The question of what reserves it would be proper or prudent for a foundation to hold, or the rate at which, given differing economic conditions, it should spend its endowment, can only sensibly be answered in the context of each foundation and each public benefit activity. As a matter of principle, tax exemptions should only be given to foundations that seek them.

There should be approaches to agree to a common definition of general interest purposes leading to tax benefit at the national level, as this would be an important step to facilitate cross-border giving.

#### **(a) Income tax**

Foundations should be relieved of income taxation on money or other items of value received from whatever legal source (e.g. individual donors, companies, governments or other NGOs, whether from home or abroad) whether by donation, grant, contract or testament. Relief should also be given for income from interest on capital or other funds, dividends, rents, royalties or capital gains earned on assets or the sale of assets. Losses of foundations should be taken into account. Realised capital gains and losses should be reconciled with foundations' capital.

### **Comment**

There is the tricky question here of whether income received by one foundation but earmarked for transmission to another should be regarded as 'income'. Given the scope of

the arrangements being discussed here and the common definition of 'public benefit' suggested above, donations for onward transmission should either be regarded as income and be relieved of tax or as not constituting income at all. It does not seem to be a major issue to choose between either of these two rationales: the important point is that the tax system should facilitate rather than hinder cross-border giving.

***(b) Taxation of economic activities***

Profits from related economic activities of public benefit foundations should be free of tax as long as they are exclusively applied to the foundation's public benefit purposes. There should be a tax-free allowance for unrelated business income up to a certain ceiling. The economic activities of foundations must not constrain competition rules.

**Comment**

A question here is whether a wholly owned business could, as in the UK, covenant its profits to a foundation, which could receive them together with the tax 'paid' by the concern. The principle in this case would be that all profits destined for expenditure by a qualifying foundation (i.e. destined to be spent for public benefit) should be tax-free. Such a policy would, of course, raise the problem of unfair competition.

***(c) Property and land taxes***

Foundations should be relieved of all or a proportion of property and land taxes and from duties on the transfer of property or land.

**Comment**

The practice varies widely throughout the globe.

***(d) Employment taxes***

In principle, foundations have to pay social and other charges or to contribute to pension schemes where appropriate. However, where provisions are made for tax deduction of employment costs, this tax treatment should apply to foundations.

**Comment**

Exceptions might be made for employment under official job-creation schemes or for employment given as part of a special training scheme.

***(e) Tax treatment of 'national' and 'foreign' foundations***

The tax treatment of 'foreign' and 'national' foundations should be the same in each EU country. In particular, cross-border giving and the receipt of gifts across borders should attract identical tax relief, as should gifts or giving to or from foundations within or without the EU.

**Comment**

Whether it would be possible to achieve a situation where treatment was identical is impossible to predict. The most important thing is to ensure that while relief might continue to differ across the EU, the tax treatment of foundations is not discriminatory within jurisdictions.

***(f) Company and individual donations***

Both companies and individuals should be entitled to an income tax deduction or credit with respect to donations made to foundations engaged in activities of public benefit. The limits to be applied should be generous. In principle, the limits should be the same for all European citizens or companies giving to European foundations.

### **Comment**

Governments cannot be expected to give up more than a certain proportion of tax receipts. It is an important question whether relief should be given by way of tax credits or by tax deductions. Credits are fairer in a progressive system, but deductions may persuade the wealthy to give more.

### ***(g) Tax treatment of the beneficiary***

In principle, where the beneficiary is a natural person, he/she should be exempt from tax on donations received from public benefit foundations up to a certain ceiling. The ceiling is to be further defined by tax law. Non profit organisations should be fully exempt from tax on donations received from public benefit foundations.

### ***(h) Value-Added Tax (VAT)***

VAT rules and their application should take into account the public benefit nature of foundations and their activities, and should in no case disadvantage foundations.

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# ***Model Law for Public Benefit Foundations in Europe***

The EFC's European Union Committee and its Legal and Tax Task Forces have developed this *Model Law for Public Benefit Foundations in Europe* based on the *Fundamental Legal and Fiscal Principles*. This Model Law illustrates *one way* to transform the agreed EFC Fundamental Legal and Fiscal Principles into legislation. It is meant as a concrete model to facilitate law revisions. Such a Model Law can also provide guidelines for a legal form for European foundations, where appropriate.

The Model Law comprises two separate but complementary sections, starting with the legal part and concluding with the tax environment.

## ***Part I Legal Environment of Foundations***

### ***Article 1***

#### ***Definition of a public benefit foundation***

1. A public benefit foundation shall be an independently constituted and managed body, having the disposal of assets, and/or income, whether or not in the form of an endowment, which have been irrevocably set aside for public benefit purposes.
2. A foundation shall have no members.
3. Foundations may be established in perpetuity or for a specified period of time, as expressed by the statutes.
4. The foundation's assets and any income shall be devoted exclusively to the pursuit of its public benefit objects. No benefits shall be distributed directly or indirectly, to any founder, director, officer, or employee of the foundation.

### ***Article 2***

#### ***Public benefit***

Under this Law a foundation shall be regarded as being of public benefit if, and only if:

- (a) it serves the public interest at large at domestic and/or international level, and;
- (b) its purposes include, but need not be limited to, the promotion of the public interest in one of the following fields:
  - Arts, culture and historical preservation
  - Assistance to, or protection of, people with disabilities
  - Assistance to refugees and immigrants
  - Civil or human rights
  - Consumer protection
  - Development, international and domestic
  - Ecology or the protection of the environment
  - Education, training and enlightenment
  - Elimination of discrimination based on race, ethnicity, religion, disability, or any

- other legally proscribed form of discrimination
- Prevention and relief of poverty
- Health or physical well-being and medical care
- Humanitarian or disaster relief
- European and international understanding
- Protection of, and support for, children and youth
- Protection of, and support for, disadvantaged individuals
- Protection or care of animals
- Science
- Social cohesion, including the promotion of respect for minorities
- Social and economic development
- Social welfare
- Sports, amateur athletics
- Any other purpose determined from time to time to be of public benefit

### ***Article 3***

#### ***Legal personality***

A foundation shall have legal personality. It shall acquire it on the day of its registration with the registration authority under Article 6 below.

### ***Article 4***

#### ***Legal capacity***

1. A foundation shall be free to act in pursuit of its objects in any manner allowed for in its statutes which is consistent with its public benefit status and which is not against the law.
2. A foundation shall have the right to hold movable and immovable property, and to receive and hold gifts or subsidies of any kind, including shares and other negotiable instruments, and gifts 'in kind' from any lawful source.
3. A foundation shall have the capacity, and be free, to engage in trading or other economic activities provided that any income or surpluses are clearly and directly used in pursuance of its public benefit purposes and do not constitute the main aim of the foundation.

### ***Article 5***

#### ***Formation***

1. A foundation shall be created by notarial or trust deed or by will by any natural or legal person or public body. Where a foundation has been created by a public body it shall be managed independently of it.
2. In this Article, 'public body' includes any entity, whether or not legally part of the state, national, regional or local government, or other legally constituted public authority, which provides public services or carries out public functions on a statutory basis.



**Article 6**

**Registration**

1. There shall be designated or created a registration authority for foundations.
2. The registration authority shall be established on a statutory basis and in any individual case shall act independently of any governmental, quasi-governmental, or other public body or institution, and be free of political influence.
3. It shall be the duty of the registration authority to:
  - (a) receive and hold, as public records, documents and other information required for the registration of a foundation and its subsequent operation and to make them available for inspection by the public on request;
  - (b) determine the registration of foundations, and;
  - (c) otherwise ensure that the requirements of this Law are adhered to.
4. Applications for registration as a foundation made to the registration authority shall be accompanied by the following documents:
  - (a) the founding documents;
  - (b) a statement of the assets to be set aside for the purposes of the foundation;
  - (c) the statutes;
  - (d) the intended business address or addresses;
  - (e) the names and addresses of all members of the governing board;
  - (f) the names, objects and registered offices of founding organisations where these are legal entities, or similar relevant information as concerns public authorities.
5. The registration authority may refuse to register an applicant otherwise in conformity with the requirements of this Law if, and only if, it deems the purpose of the applicant to be illegal, or it deems the refusal of registration necessary for the protection of public security or safety; for the prevention of crime; for the protection of health; or the protection of the rights and freedoms of others and the maintenance of public order.
6. The decision of the registration authority shall be published in the Official Journal (or equivalent) together with the information outlined in 4(a) – (f) of this Article.
7. The registration authority shall reach its decisions without unreasonable delay.
8. A foundation shall inform the registration authority of any changes to the information outlined in 4(a) – (f) of this Article, and the new details shall be published in the Official Journal (or equivalent).

**Article 7**

**Statutes**

1. The statutes of the foundation shall include at least:
  - (a) the name of the foundation;
  - (b) a statement of its public benefit purpose;
  - (c) the address of the foundation's registered office;
  - (d) the conditions for the admission, expulsion and resignation of members of the governing board;

- (e) the rights and obligations of the governing board and its members;
  - (f) the procedures for amending the foundation's statutes;
  - (g) the grounds for dissolution;
  - (h) the distribution of net assets after dissolution; and
  - (i) the rules applicable to the calling and conduct of meetings of the governing board.
2. The foundation's statutes shall also provide for the avoidance of actual or potential conflicts of interest between the personal or business interests of officers, board members, and employees of the foundation, and the interests of the foundation.

### ***Article 8***

#### ***Particulars to be stated in the foundation's documents***

Letters and documents sent to third parties by the foundation shall state legibly:

- (a) the name of the foundation, followed by the words 'registered foundation';
- (b) the number of the foundation's entry in the register kept by the registration authority;
- (c) the address of the foundation's registered office; and
- (d) where appropriate, the fact that the foundation is the subject of insolvency or dissolution proceedings.

### ***Article 9***

#### ***Responsibilities of the governing board***

- 1. Foundations shall have a governing board, composed of at least three members.
- 2. It shall be the duty of the governing board to take responsibility for all decisions with regard to the proper administration and conduct of the foundation's affairs. Members of the board, and foundation officers having responsibility under them, shall observe a duty of loyalty in the exercise of their responsibilities, shall act with diligence and care, and shall ensure compliance with the laws and statutes of the foundation.
- 3. The board shall ensure the return to the registration authority of all documentation required under Articles 6.4 and 11.2 of this Law.
- 4. It shall be the duty of the governing board and of the foundation's officers to make available to the registration authority all evidence material to any enquiry undertaken under Article 12 below.

### ***Article 10***

#### ***Liability of the foundation and board members***

- 1. The liability of a foundation shall be limited to its assets.
- 2. The members of the board shall be personally liable to the foundation and to injured third parties for the wilful or grossly negligent performance or neglect of their duties, but shall not otherwise be liable.

**Article 11**

***Transparency and accountability***

1. A foundation shall be obliged to keep full and accurate records of all financial transactions.
2. A foundation shall be obliged to draw up and return to the registration authority full and accurate annual statements of accounts, and an annual activity report, within 12 months from the end of the accounting year. The annual activity report should list the grants distributed, taking into account the right of privacy of the beneficiary.
3. A foundation with annual revenues in excess of €(x) and /or assets in excess of €(x) shall have its accounts professionally audited.

**Article 12**

***Supervision***

1. The registration authority shall have the duty to ensure that the governing board acts at all times in accordance with the foundation's statutes and this Law.
2. Where the registration authority has reasonable grounds to believe that the governing board of a foundation is not acting in accordance with the foundation's statutes or this Law, it shall have the power, in carrying out its duty under section 1 above, to enquire into the affairs of that foundation.
3. In the case that there is evidence:
  - that the governing board has acted improperly with respect to the foundation's statutes, and;
  - the governing board refuses to act on a warning from the registration authority;the registration authority shall have the power to order the governing board to comply with the foundation's statutes and the foundation law.
4. If evidence of financial impropriety, serious mismanagement and/or abuse is brought to the notice of the registration authority, the authority may designate an independent expert to enquire into the affairs of a foundation.
5. In the case of enquiries under sections 2 and 4 above, the registration authority shall have the power to require the managing board and officers of the foundation to make available all and any evidence material to its effective conduct.
6. The registration authority shall have the power to require the dismissal of any member of the board or officer of the foundation found guilty by a court of financial impropriety.
7. Exceptionally, where the registration authority deems that the assets of the foundation are at serious and immediate risk, the registration authority shall have the power temporarily to freeze the foundation's bank accounts and take such other emergency measures as it sees fit to protect the foundation's assets until such time as the matter can be brought before a court.
8. Where the registration authority is satisfied that the foundation is unable to conduct properly its own affairs, it may appoint an independent receiver and manager to act in place of the governing board. The appointment of a receiver and manager must be reviewed by a court within three months.

9. If the purpose of the foundation has become impossible to fulfil and cannot be amended under Article 13, or any of the circumstances described in Article 6.5 apply, the registration authority may, after having heard the governing board of the foundation, propose to the court the dissolution of the foundation.
10. Nothing in this Article shall empower the registration authority to act in the administration of a foundation.

***Article 13***

***Change of purpose***

1. Any change to the public benefit purpose proposed by the governing board shall require the agreement of the registration authority.
2. Any amendment of the bylaws, insofar as they affect the purpose of the foundation, should be consistent with the will of the founder.
3. The purpose of the foundation may only be changed if the purpose has been achieved or cannot be achieved or where the original purposes have ceased to provide a suitable and effective method of using the foundation's assets.

***Article 14***

***Dissolution***

1. The governing board of the foundation may decide upon dissolution of the foundation only if the aim of the foundation has been achieved or cannot be achieved; the time for which it was set up has expired; or the total loss of assets has taken place. The dissolution proposed by the governing board shall require the agreement of the registration authority.
2. Upon dissolution under section 1 above or, with the court's agreement, under Article 12.8, and once the creditors have been paid in full, any remaining assets of the foundation shall be spent on public purposes as near as possible to those for which the foundation was created.

***Article 15***

***Appeal to the courts***

All decisions of the registration authority shall be appealable to the courts.

**Part II Tax Treatment of Foundations and their Donors**

**Article 16**

**Qualifying bodies and expenditure**

1. In this Law 'qualifying foundation' means any foundation established for public benefit purposes according to this Law.
2. In this Law 'qualifying expenditure' means expenditure for public benefit purposes, within the country of residence or abroad incurred by a qualifying foundation in relation to a chargeable period (*i.e. tax year*).

**Article 17**

**Income tax**

Subject to the above, a qualifying foundation shall be exempt from income tax on its qualifying expenditure in any European Union (EU) Member State, even if it uses a reasonable proportion of its income to preserve its endowment and build up reasonable reserves for the sustainable pursuit of its public benefit purposes. A qualifying foundation shall be relieved of income taxation in any European Member State on:

- (a) **General income:** Income from whatever legal source, including individual donors, companies, governments or other non-profit bodies whether in the form of a donation or grant or by way of testament, or in payment for services carried out in pursuit of public benefit purposes;
- (b) **Interest, dividends, capital gains:** Income from interest on the assets of the foundation, and in respect of any interest, annuities, dividends or shares wherever held;
- (c) **Income related to real estate:** Income arising in respect of rents and receipts from an interest or right in any land; and
- (d) **Trade or business income:** Income arising from trade or business, provided that the profits are applied solely to the public benefit purposes of the foundation, and the trade or business is carried on in the course of the actual carrying out of a primary purpose of the foundation.

**Article 18**

**Capital gains**

A qualifying foundation shall be exempt from capital gains tax on the realisation of any asset whatsoever in any EU Member State provided that the income from such realisation is either reinvested for the purposes of the foundation or expended under Article 16.2 above.

**Article 19**

***Property and land taxes***

1. A qualifying foundation shall be exempt from taxes related to the value and sale of property in any EU Member State insofar as they are not within the discretion of relevant authorities.
2. Competent authorities shall have the power to exempt registered foundations from local property taxes.

**Article 20**

***Donations to domestic and other foundations in the EU***

1. Individuals giving to any EU-based qualifying foundation shall be entitled to deduct the amount of the donation from their personal income.
2. Companies and other corporate bodies giving to any EU-based qualifying foundation shall be entitled to deduct the amount of the donation from their corporate income.

**Article 21**

***Donations to non-EU foundations***

1. Individuals giving to a foreign foundation pursuing solely public benefit purposes shall be entitled to deduct the amount of the donation from their taxable income, as long as the donor has taken reasonable steps to prove that the foundation is pursuing public benefit purposes.
2. Companies and other corporate bodies giving to a foreign foundation pursuing solely public benefit purposes shall be entitled to deduct the amount of the donation from their corporate income, as long as the donor has taken reasonable steps to prove that the foundation is pursuing public benefit purposes.

**Article 22**

***Beneficiaries***

1. Individual beneficiaries in receipt of a grant or other benefit from a qualifying foundation shall not be taxed in respect of the grant or other benefit received.
2. Public benefit organisations as beneficiaries should be free of tax on the grants/ donations they receive from qualifying foundations.

### **Part III Model Law Explanatory Memorandum**

#### **Legal Section of the Model Law**

Two basic principles underlie the draft of a Model Law for Public Benefit Foundations in Europe. First, while legislation needs to be comprehensive, it should also be as *clear* and as simple as possible. The grounds for this are obvious: clarity will help foundations to comply with the law, and those charged with supervision to enforce it. Second, while the Model Law clearly needs to establish the *framework* in which foundations are established, operate, and are accountable, it should not constrict the freedom of foundations to conduct their business more than is strictly necessary, particularly as regards internal governance. Accordingly, while the draft requires certain topics concerning internal governance – for example, the rules applicable to meetings of the governing board – to be covered in the foundation's founding documents, it leaves the framing of those rules to the board.

It goes without saying that the Model Law is intended to illustrate only *one way* in which the Fundamental Legal and Fiscal Principles agreed by the EFC European Union Committee (EUC) and its Task Forces could be translated in legislation. *Translating the Principles into a coherent legal text has inevitably meant that choices have had to be made. For this reason there will be points at which the draft will be incompatible with existing legislation in some Member States.* A case in point is the acquisition of legal personality: in some jurisdictions legal personality is acquired upon the framing of the instrument setting up the foundation. In such cases registration may still be required for purposes of accountability and supervision but will not be linked, as in this text, with the acquisition of legal personality.

#### **Article 1 – Definition of a foundation**

The Article allows for the creation of time-limited foundations if foreseen in the founding documents. One needs to think about this power in conjunction with Article 14 on dissolution.

The definition of a foundation is based on the Fundamental Principles according to which foundations have no members. It also covers foundations, which start with small assets.

#### **Article 2 – Public benefit**

Article 2 contains an open list of public benefit purposes, which are subject to change over time so that the notion of public benefit remains responsive to social needs and to public perceptions. The list would need reviewing from time to time by some appropriate authority or means to be decided.

#### **Article 3 – Legal personality**

A foundation *shall* have legal personality. This does not preclude the existence of non-autonomous foundations without legal personality.

Article 3 ties the acquisition of legal personality to registration. It should be noted that the registration authority has very limited powers under Article 6.5 to refuse to register a foundation.



### ***Article 4 – Legal capacity***

This Article defines legal capacity as widely and completely as possible. It deliberately goes wider than some EU jurisdictions by allowing foundations to receive the widest possible range of gifts and income without permission of any public or judicial authority. Note that the trend in Europe is for the relaxation of existing restrictions.

### ***Article 5 – Formation***

Article 5 includes different ways to set up a foundation, which can be done through a notarial or trust deed, or by a will. The Article also notes that public authorities can create foundations. It is arguable that foundations created by commercial interests should also be managed independently of them.

### ***Article 6 – Registration***

Note that Article 3 ties the foundation's legal personality to registration. For this and other reasons, the registration authority is an important and potentially powerful body, particularly if, as this text suggests, it also has responsibility for supervision under Article 12. While the powers of the registration authority are significantly constrained – it has to act independently of political influence, act promptly and cannot normally refuse to register an applicant foundation which fulfils the requirements of the Model Law – clause 5 of this Article does give the authority scope to enquire into the real intentions of applicants and to refuse to register bodies which are undesirable for fundamental reasons of public good.

### ***Article 7 – Statutes***

Article 7 lists 9 key elements that the bylaws of foundations must address. As long as all these matters are addressed, the text assumes that each foundation should be free to decide what other matters should be covered and how. The bylaws would, of course, have to be in conformity with the law, including the present text.

Clause 2 is intended to deal with the question of actual or potential conflicts of interest. The question has been raised whether a conflict would arise where a board member, for example, voted some benefit to be conferred by the foundation by his or her fellow board members at a meeting in which he or she was not present. The present text does not distinguish this particular case from the general run of conflicts of interest.

### ***Article 8 – Particulars to be stated in the foundation's documents***

As noted above, this Article requires certain topics to be covered in the foundation's governing document, but leaves to the governing board decisions as to how precisely the internal governance of the foundation is to be managed. Note that the names of board members can be obtained from the registration authority under Article 6.4(e).

### ***Article 9 – Responsibilities of the governing board***

The introduction of this principle is intended to underline the importance of foundations' boards and good governance. It also touches upon the issue of the disclosure of governance structures and practices.

Note that this Article contains a provision, which in 9.4 places a duty on the board to co-operate with any enquiry ordered by the registration authority under Article 12.2 and 3.

**Article 10 – Liability of the foundation and board members**

The liability of the foundation is limited to its assets. The board members would be personally liable to the foundation and to the injured third parties only in case of the wilful or grossly negligent performance or neglect of their duties.

**Article 11 – Transparency and accountability**

A foundation must provide its documents to the registration office, which will make them accessible to the public. Both annual statements of accounts and an annual report of activity should be made publicly available. Accounts provide financial information whereas annual reports describe the foundation's activities in pursuit of its public benefit purpose. Information on grants should also in principle be made publicly available; however, the legitimate privacy interests of beneficiaries should be taken into account.

**Article 12 – Supervision**

It is important to note that the powers of the registration authority to supervise foundations are of two kinds: those which are aimed at ensuring that the governing board respects the statutes of the foundation (and of course the foundation law); and those that are aimed at dealing with mismanagement and abuse. Note also that as drafted the registration authority is also the supervisory authority. These two functions – of registration and supervision – could be separated if it were thought wise to do so. There could, for example be a new body specifically designed to deal with supervision, or the courts could be required to take over investigation and to take remedial action once the regulation authority had evidence of mismanagement or abuse. The difficulty with the latter suggestion is that the problems that are likely to beset foundations are often a complex mix of legal and administrative factors which the courts are not necessarily well equipped to deal with. Furthermore, emergency action might need to be taken, for example to protect the assets of a foundation from an ongoing fraud that could not wait for the relatively slow procedures sometimes involved in obtaining a court order. Any decision of the registration authority in this regard would, of course be subject to judicial review, or the equivalent, to a court injunction if the foundation were able to obtain one, and to appeal.

The question of what powers a supervisory body should possess is, of course, a large one. At present the Article is drafted so as to give the supervisor the minimum power consistent with the capacity to carry out an effective investigation into an errant foundation and to provide an effective remedy. In case the registration authority has reasonable grounds to believe that the governing board of a foundation is not acting in accordance with the foundation's statutes or this Law, it has the power to enquire into the affairs of that foundation. Where there is evidence that the governing board has acted improperly with respect to the foundation's statutes and this Law, the registration authority may warn the managing board and, if it fails to act, may order it to comply. The orders of the registration authority will be enforced according to the national law. In cases of financial impropriety, serious mismanagement and/or abuse, the authority may designate an independent expert to enquire into the affairs of a foundation.

It is important to note in this regard that the current Article 12.6 assumes that the registration authority's powers should cover only the period before the matter can be brought before a court. This means that should a foundation, whose assets have been frozen, decline itself to challenge the authority's decision, the authority would, in effect, have to seek the court's approval for its actions.

Note that the *independent* receiver and manager would be intended to supplant the board during his or her period of operation and otherwise to take over the running of the

foundation *for a limited period*. Note that the court has to review the appointment of the receiver and manager within three months. It will also be for the court to decide upon any proposal from the regulation authority to dissolve a foundation according to Article 12.8. Note also that the regulatory authority is expressly forbidden to take over the administration of a foundation at any time, including such time as the foundation might be in difficulty.

### ***Article 13 – Change of purpose***

In order to protect the will of the founder, any change to the public benefit purpose needs to be approved by the registration authority. In addition, the purpose may only be changed in clearly defined cases.

### ***Article 14 – Dissolution***

The law should recognise two kinds of dissolution:

***Voluntary dissolution*** (dealt with in this Article): The board of the foundation should be able to decide upon dissolution in clearly defined cases (if the aim of the foundation is achieved or the total loss of assets has taken place). In any case the board decision has to be approved by the registration authority. The rationale behind this is to protect the will of the founder as well as the foundation itself.

***Involuntary dissolution*** is dealt with in Article 12.8. The registration authority may propose to the court to dissolve a foundation. The involuntary dissolution of a foundation is therefore the business of the court.

### ***Article 15 – Appeal to the courts***

All decisions of the registration authority need to be subject to appeal to the courts. This is particularly important as regards a refusal to register an applicant foundation and in respect of any exercise of the registration authority of its powers of supervision. Given the length of time that may elapse before full legal proceedings can take place, the court will need to decide in the light of the circumstances in each case whether or not to suspend the action taken or proposed by the registration authority pending the hearing of the appeal.

## ***Fiscal Section of the Model Law***

The rules applying to tax exemptions of foundations as well as to tax incentives for donors should be clear and user-friendly. The taxation section of the Model Law is intended to be no more than a first attempt to set out the basic principles in a form which approximates that which might be found in legislation, remembering that such legislation would in practice not form part of the foundation law but would form part of tax legislation more generally.

It also needs to be remembered that in all jurisdictions the precise definition of such apparently clear things, such as 'land', 'rents', 'assets', 'income' (as opposed, for example, to 'capital') can be vastly complex, and in some cases counter-intuitive. Furthermore, it will be appreciated that foundations, especially in jurisdictions which do not adequately distinguish between bodies of public and private benefit, are a fertile field for tax evasion. For this reason most tax legislation is hedged around with highly complex provisions designed to prevent tax accountants taking advantage of public benefit organisations in order to evade tax that would otherwise be due.

The tax treatment of 'foreign' and 'national' foundations should, in principle, be the same in each EU country. In particular, cross-border giving and the reception of gifts across borders

should attract identical tax relief, as should gifts or giving to or from foundations within or without the EU.

### ***Article 16 – Qualifying bodies and expenditure***

In this Model Law ‘qualifying foundation’ means any foundation established for public benefit purposes according to this Law. In order to receive tax benefits, the foundation has to spend its income on public benefit purposes only.

### ***Article 17 – Income tax***

The question of what precisely is meant by ‘spending’ its income under Article 16 is dealt with in Article 17, which allows the foundation to preserve its endowment by withholding part of its income and to build up reasonable reserves having regard to its needs and circumstances and the field in which it operates.

For the present the text does not deal with the question of the powers of the taxation authority – which will necessarily be distinct from those of the registration authority – to enquire into the affairs of a foundation, (which being registered, is presumed to be of public benefit) in order to establish whether, *in the opinion of the taxation authority*, it qualifies for tax relief. In practice, the fact that a foundation is registered should normally be taken as sufficient *prima facie* evidence that it is entitled to tax relief, though the taxation authorities would be expected to take an interest should the amount set aside by a foundation for preserving its endowment or building up its reserves appear excessive. They may also be expected to have views on any proposal to extend substantially the ambit of public benefit.

As regards income derived from trade or business, the present text allows only what is commonly called ‘related’ income, that is to say, income from economic activity which is integral to the achievement of the foundation’s basic public benefit purposes. The case of ‘unrelated business income’ or income from trade or business which, though useful as a source of revenue for the foundation, is not integral to the achievement of its purposes, is difficult to deal with in legislation. ‘Unrelated’ income is very difficult to define except in context and it is of little help that it should be spent, like any other form of income which the foundation has, on public benefit purposes. In practice much has to do with what the public regards as acceptable in particular national cultures and at particular times. Unrelated business income, which should be taxed, is currently not covered in the Model Law.

### ***Article 18 – Capital gains***

A qualifying foundation shall be exempt from capital gains tax on the realisation of any asset whatsoever provided that the income from such realisation is either reinvested for the purposes of the foundation or expended under Article 16.2 above.

### ***Article 19 – Property taxes and land taxes***

Foundations should be relieved of all or a proportion of property and land taxes and from duties on the transfer of property or land. A qualifying foundation shall be exempt from taxes related to the value and sale of property. In many jurisdictions land taxes are in part or in whole the responsibility of local authorities. This being as it were a central government law it does not seem right to do more than exempt qualifying foundations from any property taxes imposed by central government, leaving to local authorities the discretion to relieve foundations of the tax due to them.

### ***Articles 20 and 21 – Donations to foreign qualifying foundations***

Both companies and individuals should receive tax incentives with respect to donations made to resident and foreign foundations engaged in activities of public benefit. The text currently opts for the system of tax deduction, while one may consider going for tax credit instead. The limits to be applied should be generous.

National tax law should treat donations to domestic and EU public benefit purpose foundations equally, as stated in Article 20 of this Model Law. The concept of giving tax incentives to donors when donating to public benefit purpose foundations should be understood EU-wide and should not be limited to national perspective. In principle, the tax incentives should also be the same for all European citizens or companies giving to non-European foreign foundations as long as the donor has taken reasonable steps to prove that the receiving foundation is solely pursuing public benefit purposes (see Article 21 of the Model Law).

### ***Article 22 – Beneficiaries***

In principle, where the beneficiary is a natural person, he/she should be exempt from tax on donations received from public benefit foundations up to a certain ceiling. Public benefit organisations should be fully exempt from tax on donations received from public benefit foundations.

# **EFC Governing Council**

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List current as at January 1st 2003*

## ***About the EFC***

The European Foundation Centre (EFC) is an independent international association that promotes and underpins the work of foundations and corporate funders active in and with Europe. Established in 1989 by seven of Europe's leading foundations, the EFC today serves a core membership of more than 200 members, associates and subscribers; 250 community philanthropy initiatives; as well as a further 50,000 organisations linked through a network of 42 information and support centres worldwide.

**Vision** –*A community of informed, inspired, committed, independent funders engaged in seeking solutions to challenges facing humanity in Europe and Internationally.*

**Mission** –*The EFC is a knowledge-based membership association dedicated to strengthening organised philanthropy, which is embedded in and supports civil society, in Europe and Internationally. The EFC helps nurture efforts aimed at supporting independent, accountable and sustainable funders throughout the New Europe, particularly when this fundamental human right to associate private capital for public benefit needs fostering.*

The Centre is an independent international not-for-profit association under Belgian law. Ultimate authority vests in the EFC Annual General Assembly of Members, with governance entrusted to an elected Governing Council, supported by a Management Committee. Strategic guidance is provided by a European Union Committee, an International Committee, a Resource Development Committee, and an EU Enlargement Task Force. Operational responsibility is entrusted to a Brussels-based Secretariat under the supervision of the EFC Chief Executive.

Membership of the Centre implies commitment to the EFC brand. Members agree to adhere to the principles and objectives set out in the Prague Declaration, and to a voluntary and self-regulatory Code of Practice endorsed by members and revised and updated on an ongoing basis.